

GOVERNMENT OF ASSAM
OFFICE OF THE COMMISSIONER OF TAXES::ASSAM::KAR BHAWAN
DISPUR.GUWAHATI.
&&&
ORDER

Dated Guwahati, the 8th December,2009.

NO.CTS-56/2005/194 :- The Assistant Commissioner of Taxes, Guwahati Unit-D vide letter No.1236 dtd. 29-05-2009 sought clarification as per provision of section 105 under the Assam Value Added Taxes, Act, 2003 regarding taxability of item namely PVC granules, resin. He submitted that an Industrial Unit namely M/s Polycon Industries, Athgaon, Hanuman Tower, Guwahati, a registered dealer under the jurisdiction of the Guwahati Unit -D is importing the item into the State for their industrial unit as input. As the matter relates to the Industrial Unit namely M/s Polycon Industries, Athgaon, Hanuman Tower, Guwahati, a notice was issued to them as personal hearing in order to give an opportunity of being heard as per provision of section 105(2) of the Assam Value Added Tax Act,2003.

Shri Pramod Agarwalla, authorized representative appeared on behalf of the Industrial Unit and placed his submission.

The contention raised by Ms/ Polycon Industries in the matter of tax liability of PVC Resin, LLDPE, PVC granules and the like under the Assam Entry Tax Act,2008 seems to be based on the following points.

- (i) The disputed items are classified under chapter 39 of the Central Excise Tariff under broad description "plastics and articles thereof" whereas the items belonging to the description of chemicals are classified under chapter 28 & 29 respectively under broad description of "inorganic Chemicals" and "Organic Chemicals".
- (ii) A certificate from the Central Institute of Plastics Engineering and Technology to the effect that plastics of polymers are covered by Chapter 39 of the Central Excise Tariff Schedule whereas chemicals fall under Chapter 28 & 29 of the said. Hence, polymers are not recognizable as chemicals within the meaning of Central Excise provisions.
- (iii) Letters from the principals namely M/s Reliance Industries Ltd. & M/s Finolex Industries Ltd.

- (iv) That the disputed items are not chemicals in common parlance.

Coming to the case of Revenue, it is found that the relevant entry of the Entry Tax Act Schedule reads "Chemicals". Now, the usage of the word in plural case clearly indicates that the legislative intention was to consider the description in the same wide term as is understood by the trade and industry in general.

In the case of *Gujrat Distributors* (1975) 36 STC116, three broad categories of chemical have been referred to by the Division Bench of the High Court. They are

- (a) basic chemicals
- (b) chemical products which are intermediary and which are used for producing other sub-ordinate articles.
- (c) end products.

In the present case, the plastic polymers or resins are processed from basic petro chemical and are used in further manufacture of plastic pipes, tanks etc. by the disputant dealer or other such dealers. Therefore, indisputably, such items fall into description of "Chemicals" covered by clause (b) above. We may also advert to the following dictionary meanings of the term 'Chemical'.

Webster's Seventh New Collegiate Dictionary defines "Chemical" as a noun to mean substance obtained by a chemical process or used for producing a chemical effect.

In Oxford English Dictionary, Volume II, Page 319, "chemical" as a noun is defined as "as substance obtained or used in a chemical operations".

There is no dispute that the substances namely PVC granules, resins or LLDPE forming the subject matter of dispute are obtained from the chemical process applied to petrochemical.

Even the trading of the item in question take place in markets recognized as chemical markets by the dealers manufactures. As regards reference to the Central Excise Tariff Schedule, it is found that many items like bentonite powder, lime stone etc. which have been judicially held to be 'chemical' are not enumerated in chapters 28 & 29 but in separate chapter 25.

(case ref : (i) *The state of Gujrat VS. Jayant chemical works (p) Ltd.*, (1975)36 STC 112 (Gujrat) ;

(ii) *State of Gujrat – Vs- Shah Bhagwatiiji Manik Chand* (1982) 50 STC 147 (Gujarat)

Therefore, the contention raised on this count is thoroughly misplaced.

It is also relevant to consider the judgement of the Hon'ble Gujrat High Court in the case, Quality Chemicals –Vs- State of Gujrat (1994) 94 STC 450 (Gujrat) wherein maleic resins which are synthetic resins containing ester gum, fumaric esters diethylene glycol and pentaerythritol obtained by chemical process were held as chemicals. The resins imported by the PVC pipe, tank-manufacturing industries are also synthetic resins processed from hydrocarbons.

As regard, the certificate from the Central Institute of Plastic and Engineering and Technology, it is found that it essentially points out to the enumeration of commodities in the Central Excise Tariff Schedule and does not express any opinion as to the nature, scope and ambit of the descriptive term 'Chemicals'. Similarly, the certificates from the principal suppliers merely describe or vouch for the contents of the substances or materials supplied by them.

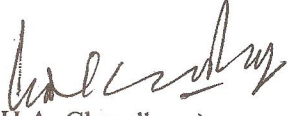
Therefore, in the considered view of the undersigned, the disputed items in question squarely fall under description of 'Chemicals' as contained in entry 51 of the Assam Entry Tax Act, Schedule.

Sd./-
Commissioner of Taxes, Assam,
Guwahati-6.

Memo No.CTS-56/2005/164-A
Copy to :

Dated Guwahati, the th December, 2009.

1. The Principal Secretary to the Govt. of Assam, Finance Department, Dispur, Guwahati-6
For favour of kind information of the Government.
2. The Addl. Commissioner of Taxes/Joint Commissioner of Taxes(all) for information.
3. The Deputy Commissioner of Taxes (all) for information.
4. The Assistant Commissioners of Taxes/Superintendents of Taxes (all) for information.
5. M/s Polycon Industries, Athgaon, Hanuman Tower, Guwahati for information.


(M.H.A. Choudhury),
Addl. Commissioner of Taxes, Assam,
Guwahati-6.

&&&